

**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: FIRST DATABANK PRESCRIPTION  
INFORMATION LITIGATION**

MDL No. 2822

**ORDER DENYING TRANSFER**

**Before the Panel:**\* Common defendant First Databank, Inc., moves to centralize three actions in the Northern District of California. The actions are pending in the Northern District of California, the Northern District of Georgia, and the Eastern District of Pennsylvania, as listed on the attached Schedule A.<sup>1</sup> Plaintiffs in all three actions oppose centralization, as does plaintiff in the one tag-along.<sup>2</sup>

On the basis of the papers filed and the hearing session held, we deny First Databank's motion. The three actions share factual issues concerning First Databank's decision to change its coding of prescription prenatal vitamins to "Non-Rx" or over-the-counter. Plaintiffs, which are manufacturers and distributors of these vitamins, allege that this new coding is false and deceptive, that it will lead to widespread denial of Medicaid and insurance coverage for prenatal vitamins, and that it will harm plaintiffs' businesses. But these issues – in particular, the central issue of whether coding plaintiffs' vitamins as lacking a federal legal prescription requirement is false or misleading – do not appear to be particularly complex or likely to require a substantial amount of discovery. In addition, there are only four actions, and motions to transfer (under 28 U.S.C. § 1404(a) or first-to-file grounds) are pending in the Georgia and Pennsylvania actions.<sup>3</sup> Even if transfer is denied, the small number of actions indicates that alternatives to centralization are feasible. *See In re: Eli Lilly & Co. (Cephalexin Monohydrate) Patent Litig.*, 446 F. Supp. 242, 244 (J.P.M.L. 1978) (listing various methods for minimizing duplicative pretrial proceedings).

---

\* Judge Lewis A. Kaplan took no part in the decision of this matter.

<sup>1</sup> The Panel has been informed of one additional federal action involving related issues, which is pending in the Western District of Texas.

<sup>2</sup> Plaintiffs are Exeltis USA, Inc. (plaintiff in the California action), Acella Pharmaceuticals, LLC (Georgia action), Women's Choice Pharmaceuticals, LLC (Pennsylvania action), and Mission Pharmacal Company (Texas tag-along action).

<sup>3</sup> At oral argument, First Databank's counsel stated that First Databank intends also to seek Section 1404 transfer of the Western District of Texas action.

-2-

IT IS THEREFORE ORDERED that the motion for centralization of these actions is denied.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, reading "Sarah S. Vance", is positioned above a horizontal line.

Sarah S. Vance

Chair

Marjorie O. Rendell  
Ellen Segal Huvelle  
Catherine D. Perry

Charles R. Breyer  
R. David Proctor

**IN RE: FIRST DATABANK PRESCRIPTION  
INFORMATION LITIGATION**

MDL No. 2822

**SCHEDULE A**

Northern District of California

EXELTIS USA, INC. v. FIRST DATABANK, INC., C.A. No. 4:17-04810

Northern District of Georgia

ACELLA PHARMACEUTICALS, LLC v. FIRST DATABANK, INC.,  
C.A. No. 1:17-05013

Eastern District of Pennsylvania

WOMEN'S CHOICE PHARMACEUTICALS, LLC v. FIRST DATABANK, INC.,  
C.A. No. 2:17-03725